

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DEBRA LAMAR-IGEIN,

Plaintiff,

v.

AAA NORTH PENN,

Defendant.

CIVIL ACTION No. 3:07-CV-0843

(JUDGE CAPUTO)

**MEMORANDUM**

Presently before the Court is Defendant AAA North Penn's Motion (Doc. 42) to Dismiss Plaintiff Debra Lamar-Igein's Amended Complaint (Doc. 16) pursuant to Federal Rule of Civil Procedure 4(m). Because Plaintiff has not timely effected service, Defendant's motion will be granted. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

**BACKGROUND**

Plaintiff, proceeding *pro se*, filed a Complaint on May 9, 2007, bringing a claim under Title VII of the Civil Rights Act of 1964 against Defendant AAA North Penn and against Arnie Lotz. (Doc. 1.) Defendants moved to quash service on June 11, 2007 (Doc. 9) and on June 25, 2008 Plaintiff filed her Amended Complaint (Doc. 16), against Defendant AAA North Penn only, as well as a motion for summary judgment (Doc. 17). Plaintiff filed a second motion for summary judgment (Doc. 35) in July 2007. Plaintiff also appealed this Court's denial of her motion for leave to amend her complaint a second time, and the Third Circuit Court of Appeals dismissed this appeal. (See Docs. 31 & 40.)

On June 29, 2007, Defendant filed a Motion to Quash and Dismiss. (Doc. 21.) This Court granted Defendant's Motion to Quash Service on October 3, 2007, noting that it appeared that service of the Summons and Complaint was not filed in accordance with Rule 4(h) of the Federal Rules of Civil Procedure (Doc. 39), and thereafter dismissed Plaintiff's pending motions for summary judgment as moot. (Doc. 41.)

On February 25, 2008, Defendant filed the instant motion to dismiss Plaintiff's Amended Complaint pursuant to Federal Rule of Civil Procedure 4(m) for failure to timely effect proper service. (Doc. 42.) Defendant filed a brief in support (Doc. 44), and Plaintiff did not file an opposing brief. Therefore, pursuant to Local Rule 7.6, this motion will be deemed unopposed. The Court will analyze its merits in accordance with *Stackhouse v. Mazurkiewicz*, 951 F.2d 29, 30 (3d Cir. 1991).

### **DISCUSSION**

Federal Rule of Civil Procedure 4(m) provides that:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against the defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

The Third Circuit Court of Appeals reads this rule “to require a court to extend time if good cause is shown and to allow a court discretion to dismiss or extend time absent a showing of good cause.” *Petrucelli v. Bohringer & Ratzinger, GMBH*, 46 F.3d 1298, 1305 (3d Cir. 1995). Defendant submits that it has not yet been properly served pursuant to Rule 4, and it has been approximately ten (10) months since the original Complaint was

filed against it in this case. (Doc. 44, at 2.); *see also Zhang .v Haven-Scott Assocs., Inc.* No. Civ. A. 95-2126, 1996 WL 355344, at \*5 (E.D. Pa. June 21, 1996) (“The filing of an amended complaint does not restate the service period as to defendants named in the original complaint.”). Furthermore, as Defendant points out, “it has been more than 120 days since this Court entered an Order on October 3, 2007, quashing service.” (Doc. 44, at 2.) The record does not reveal any attempts to effect proper service since October 3, 2007.

For these reasons, and because Plaintiff has not shown good cause for her failure to timely and properly effect service, I will grant Defendant’s motion and will dismiss Plaintiff’s Amended Complaint without prejudice pursuant to Federal Rule of Civil Procedure 4(m).

### **CONCLUSION**

For the reasons set forth above, Defendant’s motion to dismiss pursuant to Federal Rule of Civil Procedure 4(m) will be granted.

An appropriate order follows.

May 12, 2008  
Date

/s/ A. Richard Caputo  
A. Richard Caputo  
United States District Judge

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v.

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(JUDGE CAPUTO)

**ORDER**

Now, this 12th day of May, 2008, it is **HEREBY ORDERED** that:

- (1) Defendant's motion to dismiss (Doc. 42) is **GRANTED**.
- (2) Plaintiff's Amended Complaint (Doc. 16) is **DISMISSED** without prejudice.
- (3) The Clerk of the Court shall mark this case as **CLOSED**.

/s/ A. Richard Caputo  
A. Richard Caputo  
United States District Judge